



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

NOV 29 2004

Mr. Carle B.H. La Couture
La Couture Consulting & Training
P.O. Box 235
Lumberton, NJ 08048

Ref. No. 04-0169

Dear Mr. La Couture:

This is in response to your July 12, 2004 letter concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to "small-lot customers" transporting hazardous materials in privately owned vehicles. You provide a specific scenario in which a distributor sells lighters, lighter refills, and strike-anywhere matches to private carriers in full-case and broken case lots. Specifically you ask if these shipments are subject to the HMR, and if so, do they qualify for the "materials of trade" exception in § 173.6.

The transportation of hazardous materials by "small-lot customers" in support of business operations is considered transportation in commerce, and is subject to the HMR.

"Material of trade" is defined in § 171.8 as a hazardous material, other than a hazardous waste, that is carried on a motor vehicle for the purpose of protecting the health and safety of the motor vehicle operator or passengers, for the purpose of supporting the operation or maintenance of a motor vehicle, or carried by a private motor carrier in direct support of a principal business that is other than transportation by motor vehicle. A shipment of hazardous material by a "small-lot customer," that meets the definition of "material of trade" in § 171.8 and the requirements specified in § 173.6, is not subject to any other requirements of the HMR.

Lighter refills and strike-anywhere matches do not require approval (i.e., "T" number) and are eligible for the material of trade exception specified in § 173.6. Lighters and their inner packagings must be approved by the Associate Administrator, packaged in an outer packaging specified in Special Provision N10 at the Packing Group II performance level, and are not eligible for the material of trade exception in § 173.6. We intend to clarify this interpretation in a future rulemaking.



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173.6

A separate exception for lighters is provided in § 173.308. When no more than 1,500 lighters are transported in one motor vehicle by highway in accordance with § 173.308(b), the shipment is excepted from Subparts C through H of Part 172 (i.e., shipping papers, marking, labeling, placarding, emergency response information, training) and Part 177.

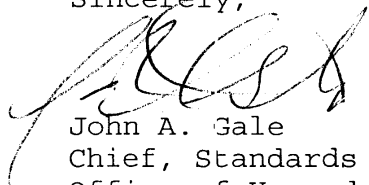
You should also note that, a notice of proposed rulemaking (NPRM), published on August 16, 2004 under Docket FM-237 (69 FR 50796), proposed amendments to the HMR related to the examination, testing, certification, and transportation of lighters and lighter refills. The proposed rulemaking is available at the following website:

http://hazmat.dot.gov/rules_history/69fr-50975.pdf

We have enclosed a copy of the NPRM.

I hope that this information is helpful. If you need further assistance, please contact us.

Sincerely,



John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards

Enclosure

LA COUTURE CONSULTING & TRAINING

PO BOX 235
LUMBERTON, NJ 08048
609-267-2820
FAX: 609-267-6090
clacouture1@comcast.net

July 12, 2004

BAH
§ 173.6
MOT
04-0169

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards, DHM-10
Office of Hazardous Materials Safety, RSPA
U.S. Department of Transportation
400 Seventh St., S.W.
Washington, D.C. 20590-0001

REQUEST FOR INTERPRETATION, 49 CFR §171.8 and §173.6

Dear Mr. Mazzullo:

Previously, interpretations have been issued with respect to the two referenced sections and the applicability to transport of Materials of Trade in salesmen's autos.

My specific request for interpretation relates to similar transportation, but on privately-owned vehicles, by what might be described as "small-lot customers" or "Mom & Pop" customers.

To cite a particular scenario:

A distributor sells goods that fall outside the Consumer Commodity definition and which require performance certified packaging – or which might also, as in the case of lighters, lighter refills, and strike-anywhere matches, require approval and "T- number" package marking – and which are sold to such customers in full-case as well as broken-case lots. His customers arrive in their privately-owned motor vehicles, which are not within the definition of Commercial Motor Vehicle.

I would interpret that, so long as the requirements of 49 CFR §173.6 (a) (1) and (a)(2) as to limits, §173.6 (b) as to packaging, and §173.6 (c) as to hazard communication are met, the goods may be transported by the "small-lot" customers as Materials of Trade.

I seek your agreement with, or modification of, this interpretation.

Thank you for your consideration of this request.

Yours very truly,

Carle B.H. LaCouture
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